IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.501 OF 2003

Rahul Bajaj. ... Petitioner.

vs.

Orient Shares & Stock Brokers Ltd. ... Respondents.

Mr.Aspi Chinoy with Z.Andhyorujina & Ranjit Waghela i/b. Dhru & Co., for Petitioner.

Mr.Chetan Kapadia i/b. Paras Kuhad & Associates with Kartik Somasundaram & Ajit Anekar, for Respondents.

Mr.P.N.Mody for Bombay Stock Exchange.

CORAM: D.K.DESHMUKH,J.

DATED: 23rd June,2005

P.C.:-

1. By this petition, petitioner challenges the Award made by the Arbitral Tribunal constituted under the Bye-laws of Bombay Stock Exchange. By that Award, the arbitral tribunal has directed the petitioner to pay amount of Rs.3,58,71,440/- (Rupees Three Crores Fifty Eight lakhs Seventy One thousand Four hundred forty only). The facts that are material and relevant for deciding

the petition are that the respondents are the share brokers on the Bombay Stock Exchange and the petitioner was a client of the respondents. The respondents made a claim claiming an amount of Rs.4,84,20,130/- with interest, as the price of the shares of Amar Raja Batteries Ltd. which were purchased by the Respondents on behalf of the petitioner. But according to the respondents, though the shares were purchased, the petitioner did not pay the price and therefore, claim was made for the price of the shares. One of the defences raised by the petitioner was that the respondents cannot claim the price of the shares because the respondent is not in a position to deliver the shares even if the petitioner pays the price of the shares. The matter was contested by both the sides and the matter was closed for Award on 10th February,2003. It appears that in the mean time the Arbitral Tribunal received a copy of letter dated 24th February,2003 addressed by the Stock Exchange to the respondents, copy of that order was forwarded to the Arbitral Tribunal. In that letter, it was stated that the Stock Exchange had withheld total number of 2,06,906 shares of Amara Raja Batteries in the account of Respondents, since he had failed to make payment on due date. It is further stated that the Stock Exchange had advanced amount of Rs.5,04,28,899.56/- to the Respondents in the month of March,2001 to meet its obligation and that amount was expected to be paid within a period of 90 days from the date of advance. But the Respondents failed to make payment of that amount and therefore, the Stock Exchange sold the shares in the market and realised the amount of Rs.1.25 crores. It appears that after receiving this letter, the Arbitral Tribunal on its own converted the

claim from claim for price of shares to claim for damages and made an Award on 29th August,2003, directing the petitioner to pay the above referred amount.

2. The Award impugned in this petition is challenged on the ground that the claim as framed and filed by the Respondents for the price of the shares had to be rejected by the Arbitral Tribunal in view of the letter dated 24th February,2003, because it was clear from that letter that the respondents are not in a position to deliver the shares even if the petitioner pays the price of the shares, and the claim was only for the price of shares. It is further submitted that the Arbitral Tribunal could never have passed an Award directing the petitioner to pay damages without claimant first amending its claim, giving up the first claim for price of shares and re-frames the claim for damages, and then prove his claim by leading evidence.

3. I have also heard the learned Counsel for respondents. He does not dispute that the reference was closed for Award on 10.2.2003. He also does not dispute that letter dated 24.2.2003 was received by the Arbitral Tribunal after 10.2.2003. According to the learned counsel, however, the Arbitral Tribunal was justified in awarding damages in the face of letter dated 24.2.2003 , as the petitioner could not have disputed the contents of letter dated 24.2.2003.

4. It is an admitted position that the only claim that was made by the respondents was for the price of shares which were purchased by the

respondents on behalf of the petitioner. Obviously, the price of shares can be claimed only on the claimant being in a position to deliver the shares on the respondents agreeing to pay the price. It is also an admitted position that it was one of the defences raised by the petitioner that the claim of the respondents for price of the shares cannot be awarded because they were not in a position to deliver the shares.

5. It is also an admitted position that the letter dated 24th February,2003 was received after the reference was closed for Award and the letter dated 24th February,2003 has been considered by the Arbitral Tribunal for making the Award in favour of respondents, without granting an opportunity of being heard to the petitioner in relation to that letter. It is also an admitted position that at no point of time the respondents have amended its claim and claimed damages instead of price of the shares. In my opinion, the proper course to be followed by the Arbitral Tribunal in the absence of any amendment in the statement of claim made by the respondents, was to reject the reference because now the respondents are not in a position to deliver the shares. The procedure followed by the arbitral tribunal was completely in breach of principles of natural justice. In no case the letter dated 24.2.2003 could have been taken into consideration by the arbitral tribunal without granting an opportunity of being heard in relation to that letter to the petitioner. It is pertinent to note that it is clear from that letter that the said letter does not disclose as to when the sale of shares took place. It is however, clear from that

letter that the shares were not sold immediately on the alleged default committed by the petitioner. It states that the Stock Exchange advanced the amount in March,2001 and on default being committed by the respondents in repaying the amount within 90 days, the sale was conducted. But the letter does not disclose as to on what date or in which month the sale was conducted. Therefore, it is impossible to work out the amount of damages merely on the basis of letter dated 24th February,2003. It goes without saying that the amount of damages will have to be fixed as on the date of the alleged breach of contract. Thus, I find that the Award made by the arbitral tribunal which is impugned in the petition, has been made in total disregard of the principles of natural justice. The award therefore, is liable to be set aside. In the result therefore, the petition succeeds and is allowed. The petition is granted in terms of prayer clause (a). The Respondents are directed to pay costs of this petition as incurred by the petitioner.